MEMORANDUM OF UNDERSTANDING
Between the
Mississippi Forestry Commission
and the
Secretary of State

This Memorandum of Understanding (MOU) is entered into between the Mississippi Forestry Commission, hereinafter referred to as MFC, and the Secretary of State, pursuant to Sections 29-3-1 et seq. and Sections 49-19-1 et seq. of the Mississippi Code.

It is the intent of the Secretary of State and the Mississippi Forestry Commission to establish a more robust and effective operating model for Sixteenth Section and other public land management, to maximize sustainable revenue, and to increase the transparency of operations related to said management consistent with and in compliance with statutory requirements. It is the intent of the Secretary of State to review and audit cost and earnings associated with Sixteenth Section land revenue, to validate the work done and timber security, and to work with the various school boards to achieve the objectives stated herein. The intent of the MFC is to provide timber management services to the Secretary of State and to the school boards to achieve the objectives stated herein.

For that purpose the Secretary of State and the MFC enter into this MOU and in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows.

A. <u>PERIOD OF PERFORMANCE</u> The period of performance of this MOU shall begin upon final signing of each party, and shall continue until the end of June 30, 2012 unless an extension of time is mutually agreed upon by the parties.

B. <u>DUTIES OF PARTIES; BREACH</u> The parties agree to perform the duties identified below for the entire period of performance of this MOU.

(1) The Secretary of State will:

(a) generally act as a liaison between the public school districts and the MFC and will work to insure that the school boards follow the MFC's forest management plans (FMP's);

(b) review, advise and consult with the MFC, subject to the provisions in Miss. Code Ann. §§49-19-1 et seq. and §29-3-45(1)(b), on all FMP's and proposed management activities on public trust lands;

(c) accompany and work with the MFC to obtain approval from the Boards of Education of annual forest management plans no later than August 31st of the fiscal year in which the activity occurs, as requested by the MFC;

(d) help facilitate the MFC's implementation of management practices and timber sales services identified in the school district's FMP;

(e) audit, or review the work to be performed by the MFC and its subcontractors for compliance with the terms of the FMP, and report to the MFC and school district as necessary;

(f) work with the MFC to obtain compensation and the necessary approval of the school districts for actual expenses the MFC incurs in the performance of its duties under the school district's FMP;

(g) review and audit the financial transactions associated with the school district's FMP;

(h) review annual budgets for forestry management practices on public school trust lands;

(i) facilitate the publication of notices for timber sales, the collection and consideration of the bids received by the school board, drafting of timber sales contracts, and the oversight of the performance of the sales contracts;

(j) research and develop market strategies for maximizing sustainable timber revenue and minimizing costs to school districts for the management of public school trust lands; and

(k) after giving the MFC written permission to incur expenses under B(2)(e) below for obtaining computer programs, licenses, and data on behalf of the Secretary of State, reimburse the MFC for the Secretary of State's portion of those expenses.

(2) The MFC will:

(a) provide forest management services to the Secretary of State and the various school boards with the advice and consultation of the Secretary of State subject to the provisions in Miss. Code Ann. §§49-19-1 et seq. and §29-3-45(1)(b);

(b) develop FMP's to achieve the objectives set forth herein;

(c) perform forest management activities to maximize sustainable forest revenues from Sixteenth Section lands in compliance with this MOU and applicable law;

(d) provide an annual report to the school district and the Secretary of State no later than July 1st of each year which states all expenses incurred during the previous fiscal year and other pertinent information; and

(e) provide access to data collected by the MFC (including the computer programs and licenses required to retrieve the data) and invoices pertaining to the forest management practices and disposition of forest products occurring or located on public trust land.

(3) The failure to perform any duty specifically identified in this MOU will constitute a breach of this MOU. The Secretary of State and MFC agree the duties identified herein are reasonable, necessary and proper for the performance of their obligations under applicable Mississippi law.

C. <u>EMPLOYMENT STATUS</u> The legal relationship between the MFC and the Secretary of State shall, during the entire term of this contract, be construed to be an independent contractor relationship. Nothing in this contract is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship between these two parties.

The MFC and the Secretary of State represent that they are qualified to perform the duties to be performed under this contract and that they have, or will secure, if needed, at their own expense, applicable personnel who are qualified to perform the duties required under this contract. The Secretary of State will employ qualified personnel whose sole scope of employment will be the performance of the Secretary of State's duties under this MOU.

The MFC and the Secretary of State shall pay when due, all salaries and wages of their respective employees and they accept exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required.

D. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS All data collected by the MFC and Secretary of State and all documents, notes, programs, databases (and all application thereof), files, reports, studies, and/or other material collected and prepared by them in connection with this contract, whether completed or in progress, shall be the shared property of MFC and the Secretary of State. MFC hereby reserves all rights to the databases and all application thereof and to any and all information and/or materials prepared in connection with this contract.

E. INDEPENDENT PARTIES MFC and the Secretary of State are and will be acting as independent parties in the performance of this work and MFC and the Secretary of State will be responsible for official actions of their respective employees or agents in the scope of their official employment. MFC and the Secretary of State, by State law, maintain worker's compensation insurance covering all their employees.

It is not intended that the Secretary of State or MFC would become liable to third parties by virtue of this agreement, nor does the Secretary of State or MFC waive, hereby, any immunity they may have, including sovereign immunity and immunity arising under the 11th Amendment of the United States Constitution.

F. MODIFICATION/TERMINATION Modification, changes or amendments to this MOU may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this MOU must be in writing and signed by the parties hereto. This MOU may be terminated by any of the parties hereto upon written notice delivered to the other party at least ninety (90) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

G. ASSIGNMENT The MFC shall not assign or otherwise transfer the obligation incurred on its part pursuant to the terms of this MOU without the prior written consent of the Secretary of State. Any attempted assignment or transfer of its obligations without such consent shall be null and void. All obligations and duties of either party under this MOU shall be binding on all successors in interest or assigns of such party.

H. DISPUTES Any dispute arising under this MOU shall be resolved in the following manner: In the event of disagreement, the Secretary of State and the MFC shall present their

position in detail to each other in writing, and agree to negotiate in good faith to effect an equitable voluntary settlement.

I. APPLICABLE LAW This MOU shall be construed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be the Chancery Court of Hinds County, Mississippi. All parties expressly agree that under no circumstances shall any party be obligated to pay the attorney's fees or the costs of any legal action to any other party.

If any term or provision of this MOU is prohibited by the laws of the State of Mississippi, or declared invalid or void by a court of competent jurisdiction, the remainder of the MOU shall be valid and enforceable to the fullest extent permitted by law.

J. WAIVER Failure of any party hereto to insist upon strict compliance with any of the terms, covenants and conditions thereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this MOU.

K. REVIEW In accord with B(1)(b) and B(2)(a) above and subject to the provisions in Miss. Code Ann. §§49-19-1 et seq. and §29-3-45(1)(b), the Secretary of State will review, advise, and consult with the MFC concerning the development of FMPs and the management practices proposed for public trust lands. The Secretary of State may contract for, hire, or otherwise secure sufficient personnel to perform his obligations under this MOU without prior approval of the MFC. All such contracts shall be subject to the terms and conditions of this MOU and to any conditions of approval that Secretary of State may deem necessary.

L. THIRD PARTY ACTION NOTIFICATION The MFC shall give Secretary of State prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the MFC by any entity that may result in litigation related in any way to this contract.

M. CONFIDENTIAL INFORMATION In the event any party receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon them a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, the party shall promptly inform the other parties and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This section shall survive the termination or completion of this MOU.

N. CAPTIONS The captions or headings in this MOU are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this MOU.

O. SPECIAL TERMS AND CONDITIONS It is agreed and understood by the parties to this MOU that there are no special terms or conditions.

P. NOTICE Any notice required or permitted to be given under this MOU shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to the following:

To the MFC:
State Forester
Hon. Charlie Morgan
Mississippi Forestry Commission
301 N. Lamar St, Ste 300
Jackson, MS 39201-1404

To the Secretary of State:
Secretary of State
Hon. C. Delbert Hosemann, Jr.
Office of the Secretary of State
401 Mississippi Street, Heber Ladner Bldg.
Jackson, MS 39201-1012

All parties agree to promptly notify each other of any change of address.

APPROVAL

Secretary of State Approval

C. Delbert Hoseman, Jr.
Mississippi Secretary of State

Date:

MFC Approval

Charlie Morgan
State Forester

Date: